

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.272 OF 2016
IN
WRIT PETITION NO.4949 OF 2015**

**Dyaneshwar Mhadev Gogawale and ors. : Applicants
versus
Shri Yamai Devi Trust and ors. : Respondents.**

**Mr. K S Dewal I/by Mr. R S Tanna for the Applicants.
Mr. R S Apte, Senior Advocate I/by Ms. Smita G Mane for the Respondent
Nos.2, 4, 5 and 10.
Mr. R S Kadam for the Respondent No.1.
Mrs. M P Thakur, AGP for the Respondent Nos.3 and 4/State.
Mr. Avinash Avhad I/by Mr. Abhijeet Gosavi for the Respondent No.7.**

**CORAM : R. M. SAVANT &
M. S. KARNIK, JJ.
DATE : 28th SEPTEMBER 2018**

P.C.

1 The above Civil Application has been filed in the above disposed of Writ Petition for initiating action against the original Respondent Nos.2, 4 and 5 under Section 340 read with Section 195(1)(b) of the Criminal Procedure Code 1973 by making a complaint in respect thereof to the Judicial Magistrate First Class, Pune. The second relief sought is for a direction to the Respondent Nos.2, 4 and 5 to furnish sufficient security for appearing before the Judicial Magistrate First Class, Pune and/or send the Respondent Nos.2, 4 and 5 in custody of the Judicial Magistrate First Class, Pune.

2 The above Civil Application has been filed in the above Writ

Petition No.4949 of 2015. It is required to be noted that the said Writ Petition was filed on behalf of the 10 Petitioners and the allegation is that the Petitioner Nos. 2, 3, 6, 8 and 9 i.e. Dnyaneshwar Mahadev Gogawale, Dinkar Pandurang Hajare, Suresh Haribhau Jaid, Malibhau Maruti Lokhande and Eknath Pandharinath Daundkar i.e. the Applicants herein had not authorised the other Petitioners to file the said Writ Petition on their behalf.

3 In so far as the said Writ Petition is concerned, the same was filed on 29/05/2015 challenging an order passed by the Assistant Charity Commissioner, Pune Region, Pune under Section 41-A of the Maharashtra Public Trust Act. The provision of Section 41-A of the Maharashtra Public Trust Act can be invoked for issuance of directions for the proper management of the Trust in question. The Trust in question in the instant case is Shri Yamai Devi Trust, which is situated in village Kanhersar, Tal. Khed, District Pune. It seems that the said Trust has established a temple of the Goddess Yamai Devi and that there is fair/programme preceding Dussehra during the Navratri festival. The said Writ Petition had come up for admission before a learned Single Judge in Vacation on 04/06/2015. The learned Single Judge on the said day passed an order which is to the following effect :-

- (i) Order passed by Assistant Charity Commissioner to the extent to hold the election for a period of 2 to 3 months (i.e. May 2015 to July 2015) on the basis of list of members, whose names appears as members of trust

in the year 2010 is hereby stayed till next date of hearing. However, it is clarified that the order passed will not come in the way of trust to immediately initiate process to hold the election to elect new trustees of the trust for a period of 5 years in accordance with the scheme of the trust.

- (ii) Learned APP is directed to communicate order to Assistant Charity Commissioner, Pune.
- (iii) Issue notice to respondents, making it returnable within 3 weeks.”

Hence the learned Single Judge permitted the trust to immediately initiate process to hold the elections to elect new Trustees of the Trust for a period of 5 years in accordance with the scheme of the Trust. After the said order dated 04/06/2015 came to be passed the machinery was set in motion for holding the elections to the said Trust. The matter was taken up in the meeting of the Trust and Resolutions came to be passed for holding the election to the said Trust which Resolutions were allegedly proposed and seconded by two of the Applicants herein i.e. Applicant No.1 Dyaneshwar Mahadev Gogawale and Applicant No.5 Eknath Pandharinath Daundkar. The elections ultimately culminated on 23/06/2015 and immediately on the next day a Change Report was filed with the office of the Assistant Charity Commissioner, Pune requesting him for a change to be recorded in the PTR. It is in the light of the elections that were held and the Change Report filed, that an affidavit came to be filed in the said Writ Petition by Mohan Dagadu Daundkar dated 17/07/2015 mentioning therein the factum of the elections being held and the

Change Report being filed and seeking permission to withdraw the said Writ Petition. The said Writ Petition accordingly was allowed to be withdrawn on 20/07/2016. It is long thereafter sometime on 21/01/2016 that the instant Civil Application for taking action under Section 340 read with Section 195 (1) (b) of the Criminal Procedure Code came to be filed.

4 Filing of the instant Civil Application at the said point of time is sought to be justified on the ground of the filing of the Writ Petition, the affidavit filed therein and also the holding of the elections that the Applicants were not aware and immediately on acquiring knowledge that they have filed the instant Civil Application.

5 A reading of the above Civil Application indicates that the undertone of the above Civil Application is the grievance in respect of the elections which were held to the Trust in question and which culminated on 23/06/2015 though it is also the allegation of the Applicants that they had never authorised the other Petitioners to file the said Writ Petition No.4949 of 2015.

6 On behalf of the contesting Respondents, the Respondent Nos.2 and 4 have filed their affidavits. To the affidavit of the Respondent No.2 herein Mohan Dagadu Daundkar are annexed various documents leading up to the

elections ultimately getting over on 23/06/2015 and the Change Report filed thereafter on 24/06/2015.

7 We have gone through the said affidavits and the documents annexed thereto with the assistance of the learned counsel for the parties. As indicated above the undertone of the above Civil Application appears to be the grievance of the Applicants in respect of the elections that were held to the said Shri Yamai Devi Trust i.e. the Trust in question. In so far as the said aspect is concerned, as indicated above, the Change Report which the Respondent No.2 herein has filed would undoubtedly be heard in the proceedings arising therefrom and the Applicants herein can undoubtedly contest the issue of the elections in the said proceedings.

8 In so far as the vakalatnama of the 5 Applicants, who have joined together to file the above Civil Application and who were the Petitioner Nos. 2, 3, 6, 8 and 9 in the said Writ Petition No.4949 of 2015, is concerned, it is required to be noted that the allegation appears to be that the signatures of the Applicants have been forged but in the back drop of the aforesaid facts the allegation can be said to be that the vakalatnama of the said Petitioners i.e. the Applicants herein has been misused, It is required to be noted that no independent material has been placed on record by the Applicants to buttress their case that their signatures on the vakalatnama have been forged. It is

therefore not possible for us to go into the said aspect and in our view the said aspect does not warrant any inquiry to be conducted as postulated in Section 340 of the Criminal Procedure Code.

9 In the said context, it is required to be noted that the Trust in question i.e. Shri Yamai Devi Trust has its base in village Kanhersar, Tal. Khed, District Pune. It is impossible to believe that the Applicants were not aware of filing of the Writ Petition, and its withdrawal on the basis that the elections to the said Trust were already held. In a village like Kanhersar the activities of the Trust which as indicated above manages the Yamai Devi Temple must be the focal point in so far as the villagers are concerned, especially having regard to the fact that the fair/programme is organized during Navratri festival, funds of which appears to be the bone of contention between the parties.

10 The second aspect which militates against the Applicants' case is the fact that the instant Civil Application has been filed after a period of 6 months of the above Writ Petition being withdrawn as also the elections being held. It appears that the Applicants, piqued by the fact that they are no more in the management of the said Shri Yamai Devi Trust, have thereafter taken umbrage to the elections being held and have therefore chosen to file the instant Civil Application, making the allegation which we have referred to herein above. May be that all the Petitioners at one point of time were together

but there was a fall out amongst the Petitioners on account of the results of the elections.

11 In our view therefore no case for proceeding under Section 340 of the Criminal Procedure Code is made out. We make it clear that our observations are only in the context of the Civil Application filed under Section 340 read with Section 195(1)(b) of the Criminal Procedure Code and the c Change Report proceedings would be tried on their own merits and in accordance with law. The above Civil Application is accordingly rejected.

[M.S.KARNIK, J]

[R.M.SAVANT, J]

Laxmikant
Gopal
Chandan

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signed by
Laxmikant
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